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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 FRANCISCO MANZANO,

11 Petitioner,

12 v.

13 JAMES E. TILTON, Secretary of
14 California Department of Corrections
and Rehabilitation,

15 Respondent.

Civil No. 06cv2077 JAH(WMc)

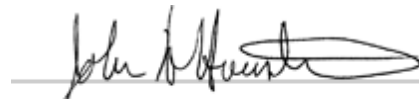
**ORDER DENYING PETITIONER'S
APPLICATION FOR CERTIFICATE
OF APPEALABILITY**

16 Petitioner, a state prisoner appearing *pro se*, filed petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence in state court on
18 the sole ground that his sentence violates the prohibition cruel and unusual punishments
19 guaranteed by the state and federal constitutions. Pursuant to 28 U.S.C. § 636(b)(1)B)
20 and Local Rule HC.2(a), the Honorable William McCurine, Jr., United States Magistrate
21 Judge, issued a report and recommendation recommending the petition be denied in its
22 entirety. Because petitioner, in his objections to the magistrates judge's report, petitioner
23 claimed he had filed a traverse which had not been addressed in the report, this Court
24 remanded the matter to the magistrate judge for submission of an amended report
25 addressing the omitted traverse. Judge McCurine subsequently issued an amended report,
26 again recommending the petition be denied in its entirety. No objections were filed to the
27 amended report. This Court, after a thorough review of the record, adopted the amended
28 report *in toto* and denied the petition in its entirety.

1 On October 14, 2008, petitioner filed a notice of appeal which included an
2 application for a certificate of appealability. A certificate of appealability is authorized
3 "if the applicant has made a substantial showing of the denial of a constitutional right."
4 28 U.S.C. § 2253(c)(2). To meet this threshold showing, a petitioner must show : (1) the
5 issues are debatable among jurists of reason; or (2) that a court could resolve the issues in
6 a different manner; or (3) that the questions are adequate to deserve encouragement to
7 proceed further. Lambright v. Stewart, 220 F.3d 1022, 1024-25 (9th Cir. 2000)(citing
8 Slack v. McDaniel, 529 U.S. 473 (2000) and Barefoot v. Estelle, 463 U.S. 880 (1983)).

9 Here, petitioner appeals this Court's order denying the petition for writ of habeas
10 corpus. In denying the petition, this Court agreed with the magistrate judge's
11 determination that petitioner's sentence was not grossly disproportionate to the crimes
12 charged considering petitioner's long history of convictions on both violent and non-
13 violent crimes and thus, the state court's affirmation of petitioner's conviction was neither
14 contrary to, nor an unreasonable application of clearly established Supreme Court law.
15 See Williams v. Taylor, 529 U.S. 362, 405-05 (2000); Lockyer v. Andrade, 538 U.S. 63,
16 73 (2003); Clark v. Murphy, 331 F.3d 1062, 1067 (9th Cir. 2003). This Court finds that
17 a certificate of appealability is not warranted in this instance because the denial of
18 petitioner's claims of cruel and unusual punishment under the circumstances here is not
19 an issue debatable among jurists of reason nor could any other court resolve the issue in
20 a different manner. Lambright, 220 F.3d at 1024-25. Accordingly, this Court **DENIES**
21 petitioner's application for a certificate of appealability.

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23 DATED: October 17, 2008

24 
25 JOHN A. HOUSTON
26 United States District Judge
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